

MEL S. HARRIS AND ASSOCIATES, LLC

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September 16, 2009

The Honorable A. Kathleen Tomlinson
United States District Court
Eastern District of New York
Federal Plaza
Central Islip, NY 11722

Re: Lesane v. SKO Brenner- 09-CV155 (LDW) (AKT)

Dear Judge Tomlinson:

This letter is written to inform the Court that plaintiff failed to appear for her deposition which was scheduled to take place yesterday, September 15, 2009. Plaintiff's counsel has given no reason for his failure to appear with his client.

Plaintiff's deposition was previously scheduled to take place on August 12, 2009, but was adjourned at the request of plaintiff's counsel due to the fact that he would be out of the country on the proposed deposition date. Plaintiff's counsel, Adam Fishbein, did not furnish this office with any suggested alternative dates despite repeated attempts by the undersigned. As a result, on August 13, 2009 the undersigned prepared a notice of deposition and mailed it to Mr. Fishbein. The deposition indicated that plaintiff would be deposed on September 15, 2009.

Plaintiff's counsel never responded to the deposition notice, and on September 9, 2009 this office sent an email to Mr. Fishbein reminding him that the deposition was scheduled to take place on September 15, 2009. He did not confirm the deposition, nor did he otherwise reply to the email.

On September 14, 2009, the undersigned attempted to contact Mr. Fishbein by telephone to confirm with him that the deposition would be taking place. Mr. Fishbein had a recording on his answer machine indicating that he was out of town for a two-week period. Due to my previous dealings with him, I recognized the recording as pertaining to his previous vacation.

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This office has been made aware of no circumstance preventing plaintiff from attending the deposition and there are factual issues present in the case that require the deposition to take place. Defendant would be prejudiced were it not to receive the deposition testimony of the plaintiff.

This office is seeking an order from the Court compelling plaintiff to appear for a deposition at the earliest possible time and for sanctions against plaintiff and her counsel for their failure to attend the scheduled deposition.

Sincerely,

MEL S. HARRIS & ASSOCIATES, LLC

By: Arthur Sanders
as/ctw

